child's support since the decree. *Held,* defendant's duty to support his minor child was unimpaired by the divorce. *Desch* v. *Desch* (Colo. 1913), 132 Pac. 60.

The weight of authority is apparently opposed to the doctrine in the principal case. PECK, DOM. REL., § 258; *Hall* v. *Green,* 82 Me. 122, 47 Am. St. Rep. 311; *Husband* v. *Husband,* 67 Ind. 583, 33 Am. Rep. 107; *Brow* v. *Brightman,* 136 Mass. 187; *Johnson* v. *Onsted,* 74 Mich. 437; *Brown* v. *Smith,* 19 R. I. 319, 30 L. R. A. 680; *Ramsey* v. *Ramsey,* 121 Ind. 215, 23 N. E. 69, 6 L. R. A. 682; *Hampton* v. *Allee,* 56 Kan. 461, 43 Pac. 779; *Cushman* v. *Hassler,* 82 Iowa 295, 47 N. W. 1036. It would seem that, as the husband is the guilty party to the divorce, he should not be rewarded by being absolved from liability to support his children. And in *Spencer* v. *Spencer,* 97 Minn. 56, 114 Am. St. Rep. 695, 2 L. R. A. N. S. 851, 7 Ann. Cas. 901; *Pretzinger* v. *Pretzinger,* 45 Ohio St. 452, 4 Am. St. Rep. 542; *Gibson* v. *Gibson,* 18 Wash. 489, 40 L. R. A. 587; *Zilley* v. *Dunwiddie,* 98 Wis. 428, 67 Am. St. Rep. 820; *Graham* v. *Graham,* 88 Pac. 852, 8 L. R. A. N. S. 1270; and *White* v. *White,* (Mo.) 154 S. W. 872, he is held liable. In the exhaustive note on this subject in 2 L. R. A. N. S. 851, the annotator declares the modern weight of authority is with the principal case. See also 7 Ann. Cas. 901 and 13 COL. L. REV. 645.

JURY—DENIAL OF RIGHT TO TRIAL BY JURY.—In the lower court a request for a verdict for the defendant had been denied. On exceptions the Supreme Judicial Court found that, on all the evidence, the request of the defendant should have been granted, and all the exceptions of the prevailing party overruled. St. 1909, c. 236 provided that in such cases the court may direct the entry of judgment for the party in whose behalf the request was made and erroneously refused. It was objected that such a statute was unconstitutional as the procedure provided for was an abridgment of the right of "trial by jury" given by the Bill of Rights, article 15. *Held,* that the statute was constitutional, as it was applicable only where a question of law was present and not one of fact. *Bothwell* v. *Boston Elevated Ry. Co.* (Mass. 1913), 102 N. E. 665.

The decision in this case is directly contrary to that of the United States Supreme Court in *Slocum* v. *N. Y. L. Ins. Co.,* 225 U. S. 364. The Massachusetts court expresses a vigorous disapproval of the holding in the *Slocum* case, and of the reasoning upon which it was based. The reasoning of the Massachusetts court is, in fact, along the same line as that of the dissenting justices in the *Slocum* case, that trial by jury is not a rigid and unchanging system but has a certain degree of flexibility in its adaptation of details to the changing needs of society without in any degree impairing its essential character. The decision in the principal case is in harmony with many other courts. *Hay* v. *Baraboo,* 127 Wis. 1, 105 N. W. 654, 3 L. R. A. N. S. 84, 115 Am. St. Rep. 977.

MASTER AND SERVANT—HABITUAL DISREGARD BY EMPLOYEES OF WARNING NOTICE AS CONSTITUTING WAIVER OF NOTICE.—An employee was killed while riding on a freight elevator, which was negligently constructed, on the em-

ployer's premises. There was a notice on the elevator reading: "Dangerous; Persons riding this elevator do so at their own risk." There was evidence that this notice was habitually disregarded by employees, and that such was known to the employer. *Held,* that such evidence was properly submitted to the jury, to determine if there was a waiver or abandonment of the prohibitory rule evidenced by the posted notice. *Selden-Breck Construction Co.* v. *Linnett,* (Okla.), 134 Pac. 956.

The vital point involved in cases of this description is whether the posting of such a notice shows such a performance by the employer of his duty of warning or cautioning the workmen, or such contributory negligence or assumption of risk on the part of the employee as will warrant the withdrawal of the case from the jury. As a general rule, whether the notice is sufficient to constitute the warning and caution, the duty of which is imposed upon the master, is a question of fact for the jury. And, as held in the principal case, it is also within the province of the jury to determine whether the continued disregard has been of sufficient duration to supersede or constitute a waiver of the rule; in other words, "a practical invitation to violate it." *Indermaur* v. *Dames,* L. R. 1 C. P. 274; *O'Donnell* v. *Allegheny Valley R. R.,* 59 Pa. St. 239; *Pa. R. R.* v. *Langdon,* 92 Pa. St. 21; *Wise* v. *Ackerman,* 76 Md. 375; *McNee* v. *Coburn Trolley Track Co.,* 170 Mass. 283; *St. Louis, I. M. & S. Ry. Co.* v. *Caraway,* 77 Ark. 405; *Wright's Adm'r.* v. *Southern Ry. Co.,* 101 Va. 36.

MUNICIPAL CORPORATIONS—PROPERTY ASSESSABLE—STREET-CAR TRACKS.—A statute gave cities power to locate sewers and to make, against the lots and parcels of land located within the territory benefited, special assessments for the purpose of paying the expenses incident thereto. The statute also expressly authorized an assessment against the city for benefits to its streets and public grounds. Defendant's street railway was within a district benefited by a sewer constructed under this statute, and an assessment was placed against the tracks and right of way of defendant. The latter contended that its property located in the street was not subject to this local assessment. *Held,* that the statute was not broad enough to warrant such an assessment against the tracks and right of way of the defendant; that street railways owning and operating railways in the streets do not hold any private easement or interest in the land upon which the tracks are located, but merely avail themselves of the public easement therein, and that since the statute provides that an assessment may be made against the city, such assessment, if made, would cover all benefits accruing to the easement of the public in the street. *Indiana Union Traction Co.* v. *Gough et al.,* (Ind. 1913), 102 N. E. 453.

This decision was inevitable in Indiana since the courts there uniformly hold that the construction and operation of street railways do not constitute an additional servitude for which compensation must be made. Besides the cases cited on this point in the opinion in the above case, see *Chicago, etc. Co.* v. *Whiting, etc. Co.,* 139 Ind. 297; *Magee* v. *Overshiner,* 150 Ind. 127, 40 L. R. A. 370. As to what use of a city's streets is an additional burden on the